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SUBJECT: MALAWI: 2010 INVESTMENT CLIMATE STATEMENT

REF: SECSTATE 124006

OPENNESS TO FOREIGN INVESTMENT

11. The government encourages both domestic and foreign investment in most sectors of the economy without restrictions on ownership, size of investment, source of funds, and destination of final product. There is no government screening of foreign investment in Malawi. Apart from the privatization program, the government's overall economic and industrial policy does not have discriminatory effects on foreign investors. Since industrial licensing in Malawi applies to both domestic and foreign investment, and is only restricted to a short list of products, it does not limit competition, protect domestic interests, or discriminate against foreign investors at any stage of investment. Restrictions are based on environmental, health, and national security concerns. Affected items are firearms; ammunition, chemical and biological weapons; explosives; and manufacturing involving hazardous waste treatment/disposal or radioactive material. All regulations affecting trade (foreign exchange, taxes, etc.) apply equally to domestic and foreign investors. While not discriminatory to foreign investors, investments in Malawi require multiple bureaucratic processes, which may include licensing and land use permissions that can be time consuming and may constitute an impediment to investment. The government has done little to simplify or streamline the process to attract increased investment.

12. Despite government efforts to promote foreign investment a number of factors have contributed to limiting such investment. These include high transportation costs, unreliable power and water supplies, cumbersome bureaucracy (especially for imports and exports), difficulty in accessing foreign exchange, lack of skilled labor, and government market interventions. After several years of steady increases, investment pledges in 2009 declined by 23.6 percent from 2008. Investment pledges in 2009 totaled about 2.6 percent of GDP.

13. Malawi has so far privatized 65 formerly state-owned enterprises. A plan to privatize another 65 public enterprises has stalled for the past year pending cabinet approval. All investors, irrespective of ethnic group or source of capital (foreign or local) may participate in the privatization program. However, the Malawi Stock Exchange regulations limit participation of an individual foreign portfolio investor to a maximum of 10 percent of any class or category of security under the program; and limit maximum total foreign investment in any portfolio to 49 percent. Malawian nationals are offered preferential treatment, including discounted share prices and subsidized credit. Subsidized credit carries a precondition that the shares or assets be retained for at least two years.

14. A variety of indices measure aspects of a country's business environment. Malawi's performance for several of these indices is

shown below. The percentile rank for the MCC indices are measured against the group of low income countries (per capita income less than US\$1,855).

Measure	Year	Index/Ranking
TI Corruption Index	2009	3.3 (rank 89 of 180)
Heritage Economic Freedom	2009	53.7 (rank 129 of 179)
World Bank Doing Business	2010	Rank 132 (of 183)
MCC Government Effectiveness	2009	0.14 (73%) (World Bank Worldwide Governance Indicators 2008)
MCC Rule of Law	2009	0.60 (90%) (World Bank Worldwide Governance Indicators 2008)
MCC Control of Corruption	2009	0.19 (69%) (World Bank Worldwide Governance Indicators 2008)
MCC Fiscal Policy	2009	-2.5 (37%) (National sources/IMF WEO)
MCC Trade Policy	2009	68.6 (55%) (Heritage Foundation)
MCC Regulatory Quality	2009	0.24 (73%) (World Bank Worldwide Governance Indicators 2008)
MCC Business Start Up	2009	0.864 (32%)

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(IFC Doing Business 2010 report)

MCC Land Rights Access	2009	0.70 (72%) (IFAD/IFC)
MCC Natural Resource Management	2009	76.12 (87%) (CIESN/YCELP Natural Resource Management Index 2009)

CONVERSION AND TRANSFER POLICIES

15. There are no restrictions on remittance of foreign investment funds (including capital, profits, loan repayments and lease repayments) as long as the capital and loans were obtained from foreign sources and registered with the Reserve Bank of Malawi (RBM). The terms and conditions of international loans, management contracts, licensing and royalty arrangements, and similar transfers require initial RBM approval. The RBM grants approval according to prevailing international standards; subsequent remittances do not require further approval. All commercial banks are authorized by the RBM to approve remittances, and approvals are fairly automatic as long as the applicant's accounts have been audited and sufficient foreign exchange is available. In practice foreign exchange availability is very limited and remittances often cannot be made even if approved. Many businesses have recently complained of lack of foreign exchange to pay for importation of raw materials, causing such businesses to operate below capacity. Traditionally, foreign exchange availability follows the agricultural cycle in Malawi. It is generally plentiful from April through September (when tobacco sales generate foreign exchange inflows), and scarce from October through March. During periods of scarcity, investors may experience extended periods without access to foreign exchange. In 2009 Malawi experienced uncharacteristic foreign exchange shortages even during the tobacco auction season. As of December 2009, foreign reserves equaled approximately one month of import cover.

EXPROPRIATION AND COMPENSATION

16. Malawi's constitution prohibits deprivation of an individual's property without due compensation. There are effective laws that

protect both local and foreign investment. The likelihood of direct expropriations has been low since the repeal of the forfeiture act in 1992. Some measures with expropriatory effects are occasionally imposed, however; in 2008 the government imposed an export ban on maize. Furthermore, the government unilaterally revoked the licenses of all private maize traders in the country. These restrictions applied equally to foreign and domestic investors. Although public tenders for the sale of shares of state-owned enterprises often encourage local participation, foreign investors tend to dominate the share-holding of large MSE-listed companies requiring significant technical and financial resources.

¶17. The Land Reform Commission -- which the government established in 1996 to review land tenure and establish a new land reform program -- presented its final report to the President in November 1999. In January 2002, the Ministry of Lands published a new land policy. Draft legislation has been prepared that incorporates many recommendations of the Commission's report, including the abolition of freehold tenure (owners holding permanent title) and the conversion of all freehold titles to leasehold (owners holding land on lease for a maximum period of 99 years). The Ministry of Lands and the cabinet have approved the new legislation and the bill is currently being scrutinized by the Parliamentary Committee on Lands and Natural Resources before submission to the National Assembly (Parliament) for a vote. Since July 2000, the Malawi Government stopped issuing freehold land in anticipation of new legislation. Pending since 2002, the new land bill has yet to be presented to Parliament.

¶18. At present, the government may employ land acquisition procedures set forth in the Land Acquisition Act of 1971. According to this Act, the government must justify its acquisition as being in the public interest and must pay fair market value for the land. Fair market value is assessed by summing the amount the owner originally paid for the land, the value of any permanent improvements that increase the productive capacity, utility or amenity of the land, and any appreciation of the land value. If the private landowner objects to the level of compensation, he may obtain an independent assessment of the land value. According to the Act, however, such cases may not be challenged in court; the Ministry of Lands, Housing and Urban Development remains the final judge.

DISPUTE SETTLEMENT

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¶19. Malawi has an independent judiciary, which derives its procedures from English Common Law. There has been little government interference in the court system. The commercial courts are working efficiently now that they have qualified personnel that are expeditiously working toward the improvement of the court system in Malawi. The Commercial Court in Blantyre currently has three judges, and a fourth position remains vacant. The Lilongwe division of the Commercial Court is not yet open and will be manned by two judges. The lack of a registry for the commercial division still hampers its functioning. Currently, there is a fully established mediation process to promote agreements between parties in disputes before court proceeding starts.

¶10. Although processing of commercial cases has significantly improved in the court system, enforcement of judgments continues to be a problem. The Commercial Court has no dedicated enforcement sheriffs. Sheriffs assigned to the High Court are used, who do not accord priority to commercial enforcements. By mid-September, 2008, only 50 percent of judgments passed had been enforced.

¶11. The court system in Malawi accepts and enforces foreign court judgments that are registered in accordance with established legal procedure. There are reciprocal agreements among Commonwealth countries to enforce judgments without this registration obligation. However, the fact that there is no such agreement between Malawi and the United States does not mean that judgments involving the two countries cannot be enforced.

¶12. Malawi has legislation that offers adequate protection for

property and contractual rights. Malawi has written commercial laws, which codify Common Law. The Sale-Of-Goods Act, the Hire-Purchase Act, and the Competition Fair Trading Act and Companies Act cover commercial practices. The first two acts have been consistently applied, and there is a track record of cases involving commercial law. In 2007, Malawi set up dedicated Commercial Courts. There is also a written and consistently applied Bankruptcy Law based on Common Law. Under Bankruptcy Law, secured creditors -- rank-ordered based upon investment registration dates -- have first priority in recovering money. Monetary judgments are usually made in the investor's currency. However, the immediate availability of foreign exchange is dependent upon supply, which varies on a seasonal basis and was chronically low throughout 2009. The 2006 Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act established an autonomous Financial Intelligence Unit (FIU) to combat money laundering and terrorist financing. The FIU is responsible for analyzing disclosures from financial institutions, referring actionable cases to competent authorities. It is also mandated to monitor compliance by reporting institutions.

¶13. Malawi is a member of the International Center for Settlement of Investment Disputes (ICSID), and accepts binding international arbitration of investment disputes between foreign investors and the state if specified in a written contract. There have been no major investment disputes involving U.S. Companies since 1996.

PERFORMANCE REQUIREMENTS/INCENTIVES

¶14. Malawi is not in compliance with WTO Trade Related Investment Measures (TRIM) notification requirements. However, Malawi does not set performance requirements for establishing, maintaining or expanding an investment. Nor does it place requirements on ownership, source of financing, or geographic location. The government accords Export Processing Zone (EPZ) status only to firms (foreign or domestic) that produce exclusively for export.

¶15. Malawi offers the following incentives, which apply equally to domestic and foreign investors:

GENERAL INCENTIVES

- * 100 % investment allowance on qualifying expenditure for new building and machinery
- * Allowances of up to 40 % for used buildings and machinery
- * 50 % allowance for qualifying training costs
- * Allowance for manufacturing companies to deduct all operating expenses incurred up to 25 months prior to the start of operations
- * Zero duty on raw materials used in manufacturing
- * Loss carry forward of up to seven years, enabling companies to take advantage of allowances
- * Additional 15 % allowance for investment in designated areas of the country
- * Duty-free importation of buses with a seating capacity of 45 persons (including the driver) and above
- * Duty-free direct importation of building materials for factories

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and warehouses

- * Duty-free direct importation of goods used in the tourism industry, which includes building materials, catering and related equipment, and water sport equipment
- * Free repatriation of dividends, profits, and royalties

INCENTIVES FOR ESTABLISHING OPERATIONS IN EXPORT PROCESSING ZONE (EPZ)

- * Zero corporate tax rate
- * No withholding tax on dividends
- * No duty on capital equipment and raw materials
- * No excise tax on the purchases of raw materials and packaging materials made in Malawi
- * No value added tax

INCENTIVES FOR MANUFACTURING IN BOND

- * Export allowance of 12 % revenue for non-traditional exports
- * Transport tax allowance equal to 25 % of international transport costs, excluding traditional exports
- * No duties on imports of capital equipment used in the manufacture

of exports

- * No surtaxes

- * No excise tax or duty on the purchase of raw materials and packaging materials

- * A timely refund of all duties (duty drawback) on imports of raw materials and packaging materials used in the production of exports.

There are also additional incentives for the horticulture, mining and tourism.

¶16. The above incentives are applied consistently. Foreign investors are generally accorded national treatment. U.S. and other foreign firms are able to participate in government/donor-financed and/or subsidized research and development programs. The following information is required to register and incorporate a company: name of the company, authorized share capital, registered office, location of books of accounts, address of the company secretary, and names of directors and shareholders. There is also a requirement that at least two Malawian residents be appointed directors for such subsidiary company.

¶17. Visas do not inhibit investors, but the need for employment permits sometimes can. Expatriate employees (of both domestic and foreign businesses) who reside and work in Malawi must obtain temporary employment permits (TEPs).

¶18. Government policy on TEPs has been unchanged since a "Policy Statement and New Guidelines for The Issuance and Renewal of [Expatriate] Employment Permits" was issued in November 1998. The guidelines state that investors may employ expatriate personnel in areas where there is a shortage of "suitable and qualified" Malawians. The policy provides for two types of TEPs:

- ** those for "key posts" (defined as positions of "strategic importance" in business operations) which are granted for the lifespan of the organization

- ** those for "time posts" (defined as positions with contracts of three-year duration or less) which are granted for three-year periods and renewable once

The policy underscores the government's desire to make TEPs readily available to expatriates, and mandates that processing times for TEP applications shall not exceed 40 working days. In practice these guidelines have been applied inconsistently, leading to delays and some uncertainty.

¶19. The government issues Business Residence Permits (BRPs) to foreign nationals who own/operate businesses in Malawi. BRPs are issued for five-year periods and are renewable. Permanent Residence Permits (PRPs) are issued to foreign spouses who reside permanently in Malawi, and to owners/operators of businesses who reside in Malawi for periods in excess of ten years. PRP holders cannot work as employees. Malawi's immigration laws governing BRPs and PRPs have been revised. There are three categories of residence permits based on amount of investment, status of applicant (investor, retiree, student, or spouse of a Malawi citizen) and period of business assignment. The maximum number of resident permits per organization is five, with the actual number allowed depending on the amount of investment.

RIGHT TO PRIVATE OWNERSHIP AND ESTABLISHMENT

¶20. Government encourages both domestic and foreign investors to establish and own business enterprises in most sectors of the economy. All investors have the right to establish, acquire, and

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dispose of interests in business enterprises. There are some restrictions to land ownership by foreigners. Sale of land to foreigners is approved only after no Malawian has shown interest to match the price offered by the foreigner. However, land acquired as part of a business establishment is not subject to this rule. Public enterprises compete equally with private entities with

respect to access to markets, credit and other business operations.

PROTECTION OF PROPERTY RIGHTS

¶21. Both foreign and domestic investors have access to Malawi's legal system, which functions fairly well and is generally unbiased. Heavy caseloads and staffing limitations, however, mean that legal remedies can take a long time to achieve. Malawi has laws that govern the acquisition, disposition, recording and protection of all property rights (land, buildings, etc.) as well as intellectual property rights (copyrights, patents and trademarks, etc.). Government has signed and adheres to bilateral and multilateral investment guarantee treaties and key agreements on intellectual property rights. Malawi is a member of the convention establishing the multilateral investment guarantee agency, the World Intellectual Property Organization (WIPO), the Berne Convention, and the Universal Copyright Convention.

¶22. The Copyright Society of Malawi (COSOMA), established in 1992, administers the 1989 Copyright Act which protects copyrights and "neighboring" rights in Malawi. The Registrar General administers the Patent and Trademarks Act, which protects industrial intellectual property rights in Malawi. A public registry of patents and patent licenses is kept. Patents must be registered through an agent. Trademarks are registered publicly following advertisement and a period of no objection. WTO rules allow Malawi (as a less developed country) to delay full implementation of the Trade-Related Aspects of Intellectual Property Rights (TRIPs) agreement until 2016. The Ministry of Industry and Trade is working with COSOMA and the Registrar General to align relevant domestic legislation with the WTO TRIPs agreement with technical assistance from the Africa Regional Intellectual Property Organization (ARIPO).

TRANSPARENCY OF THE REGULATORY SYSTEM

¶23. Malawi's industrial and trade reform program -- including rationalization of the tax system, liberalization of the foreign exchange regime, and elimination of trade and industrial licenses on several items and businesses -- has produced written guidelines intended to increase government use of transparent and effective policies to foster competition. No tax, labor, environment, health and safety or other laws distort or impede investment. However, procedural delays, and red tape, continue to impede the business and investment approval process. While market prices for goods are generally not controlled, prices of most agricultural goods -- tobacco, cotton, sugar, and maize -- petroleum products, and state-provided utilities are regulated. In recent years government has announced "minimum prices" for tobacco, cotton and maize which buyers have been obliged to offer, under threat of the loss of their buyers' license. Buyers have complained of a lack of transparency in the setting of these prices. This led the largest cotton ginning company in Malawi, a U.S. company, to withdraw from the country in 2009 after government-set minimum prices for cotton were deemed too high for profitable operations.

¶24. There have been positive steps towards increasing regulatory transparency and improving the foreign investment environment. These developments include: establishment of the Malawi Energy Regulatory Authority (MERA), establishment of the Malawi Communication Regulatory Authority (MACRA), the licensing of four cellular phone service providers, two of which are operating, and the splitting of the former parastatal Malawi Posts and Telecommunication Corporation (MPTC) into the Malawi Posts Corporation (MPC) and Malawi Telecommunications Limited (MTL) as separate entities. MTL has since been privatized. The state-owned Petroleum Control Commission (PCC) relinquished its monopoly on petroleum imports in May 2000, allowing the private sector to import Malawi's entire fuel requirement. PCC now has a largely regulatory function within the petroleum sector, although fuel prices are still controlled.

EFFICIENT CAPITAL MARKETS AND PORTFOLIO INVESTMENT

¶25. Traditionally the Reserve Bank of Malawi has pursued a tight monetary policy to bring down the level of inflation. In the recent

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past, however, the Reserve Bank has moved to a more expansionary approach to monetary policy to promote private sector development, using monetary instruments such as bank rate and liquidity reserve ratios that have been progressively reduced over the past five years. Inflation dropped, from 15.4 percent in 2005 to 7.9 percent in 2007. Rising fuel and food prices in 2008 pushed the inflation rate for the year to 8.7 percent. The Bank rate has declined considerably over the past five years, from 45 percent in 2004 to 15 percent in 2008, where it remains. The lending rate for commercial borrowers has correspondingly also declined. As a result, there has been an increase in credit extension to the private sector over the same period.

¶26. The Malawi kwacha trades as a heavily managed float against the dollar. After remaining unchanged for over five years, the rate was allowed to depreciate in late 2009, falling from 143 to 146 to the dollar at the end of December 2009. Continuing shortages of foreign exchange put pressure on the kwacha and further depreciation is expected in 2010.

¶27. The private sector in Malawi has a variety of credit instruments. Credit is generally allocated on market terms. Foreign investors may utilize domestic credit, but proceeds from investments made using local resources are not remittable.

¶28. Malawi has a sound banking sector, overseen and well regulated by the Reserve Bank of Malawi -- its central bank. There are ten full-service commercial banks: Ecobank, First Merchant Bank Limited; Indebank; National Bank of Malawi (NBM); Standard Bank (SB); First Discount Merchant Bank; New Building Society Bank; Malawi Savings Bank; Nedbank; and Opportunity International Bank. Other financial institutions are: Indefinance; Investment and Development Fund of Malawi (INDEFUND); Finance Corporation of Malawi (Fincom); Leasing and Finance Company of Malawi (LFC); the Malawi Rural Finance Company (MRFC); Continental Discount House, and First Discount House. Malawi's three largest banks command 60 percent of the market, with a total capitalization of \$952 million.

¶29. The Companies Act, the Capital Market Development Act (1990), and the Capital Market Development Regulations (1992) provide the legislative and regulatory framework for investment in Malawi. The attendant legal, regulatory and accounting systems are transparent and consistent with international norms. These acts govern the Malawi Stock Exchange (MSE).

¶30. Stockbrokers Malawi Limited (SML) is the major registered stockbroker in Malawi. Other brokerage firms are Continental Discount House, First Discount House and Trust Securities Limited. The MSE is regulated by the Stock Exchange Commission.

¶31. SML runs a secondary market in government securities, and both local and foreign investors have equal access to the purchase of these securities. The following 15 companies are listed on the MSE: Blantyre Hotels Limited (BHL), First Merchant Bank (FMB), ILLOVO Malawi Limited, Malawi Properties Investment Company (MPICO), National Bank of Malawi (NBM), NBS Bank, NICO, National Investment Trust Limited (NITL), Press Corporation Limited (PCL), Packaging Industries of Malawi (PIM), Real Insurance Malawi, Standard Bank (Malawi), Old Mutual, Sunbird Tourism Limited, and Telecom Network Malawi Limited.

¶32. The MSE is still in a nascent stage, and hostile takeovers have not yet occurred. Apart from the restrictions under the privatization program, there are no specific measures taken by private firms to restrict foreign investment or participation. Foreign investors tend to be the dominant shareholders in large MSE-listed companies requiring significant technical and financial resources. The Competition and Fair Trading Act does not cover the day-to-day trading on the MSE, but will regulate mergers, acquisitions, and takeovers that are of national interest.

¶33. The Competition and Fair Trading Act -- passed by Parliament in

1998 but made operational in 2000 -- aims to regulate and monitor monopolies and the concentration of economic power, protect consumer welfare, and strengthen the efficient production and distribution of goods and services. In accordance with the Act, the Ministry of Trade and Private Sector Development appointed competition commissioners, who in 2006 established a secretariat to oversee the Act's implementation. The secretariat approves only those acquisitions, mergers or takeovers that increase employment and net exports, and lower prices for consumers.

COMPETITION FROM STATE OWNED ENTERPRISES

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¶34. Private and public enterprises freely compete on the same terms and conditions for access to markets, credit and other business opportunities. There are exceptions, however, for some public works assignments where public enterprises tend to be given special preference by government. There are no set rules or criteria on such exceptions - Government tends to decide on case by case basis. For the past two years Government has excluded the private sector from participation in its Agricultural Input Subsidy Program. State Owned Enterprises (SOEs) tend to be very active in energy, water, agriculture, tourism, health and education.

¶35. All SOEs have an independent Chairperson and Board of Directors. The boards are composed of politicians and professionals as directors. All such boards also have senior government officials representing government departments as ex-officio members. All SOEs produce annual reports, which are audited by independent professional audit firms.

CORPORATE SOCIAL RESPONSIBILITY

¶36. There is a well developed sense of corporate social responsibility in Malawi and most corporate entities make a point to publicize such activities in the local media. Large domestic companies and international enterprises tend to be more active and generous than small domestic companies.

POLITICAL VIOLENCE

¶37. Malawi has been largely free of political violence since gaining independence in 1964. Apart from the disarming of the paramilitary group, the Malawi Young Pioneers, incidents of violence associated with Malawi's 1994 transition to democracy were few. Sporadic violence occurred in the run-up and immediately following the 2004 elections. Presidential and parliamentary elections in May 2009 were peaceful, with no significant incidences of violence. Although divisions do exist, Malawi has no significant tribal, religious, regional, ethnic, or racial tensions that could be expected to lead to violent confrontation.

¶38. Incidents of labor unrest occasionally occur, but these are usually tame affairs. There are no nascent insurrections, belligerent neighbors, or other politically motivated activities of major concern to investors.

CORRUPTION

¶39. Although progress has been made addressing the issue, corruption continues to be viewed as a major obstacle to doing business in Malawi. There have been serious allegations of corruption, particularly in the area of customs and excise tax, traffic police, immigration and government procurement. The Corrupt Practices Act provides the legal framework for combating corruption in Malawi.

¶40. The Anti-Corruption Bureau (ACB) is legally mandated to investigate corruption in Malawi. Opened in 1997 and fully staffed in 1998, the ACB has thus far brought forward a small number of high-level cases, including cases against a former Minister of

Transport and Public Works (acquitted), the former Chief Executive Officer of the Petroleum Control Commission (sentenced to six years imprisonment), and the former Mayor of the City of Blantyre (who served a nine month sentence). The ACB has had difficulties in getting high-level cases prosecuted. Malawi's Law Commission recommended in 2002 that the ACB be authorized to prosecute cases directly, rather than through the politically appointed Director of Public Prosecutions (DPP). Legislation to that effect was drafted in 2003, but was not passed. Instead, a revision to the Corrupt Practices Act, which mandated the DPP to report to Parliament on any cases it does not give consent to prosecute, was passed in 2004.

¶41. Soon after his first election win in 2004, the President Bingu wa Mutharika stated that the fight against corruption was a priority. However, investigations and trials have moved at a slow pace. In 2008, high-profile cases that were brought to trial included a former cabinet minister and a CEO of a utility company. Former President Bakili Muluzi is currently facing corruption charges in court.

¶42. Malawi subscribes to the provisions of the OECD Convention on Combating Bribery, but is not a signatory of the Convention. Malawi's Penal Code prohibits bribery. Giving or receiving a bribe -- whether to or from a Malawian or foreign official -- is a crime under section 90 of Malawi's penal code.

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BILATERAL TRADE AND INVESTMENT AGREEMENTS

¶43. Malawi's policy is to negotiate bilateral investment treaties with countries whose nationals opt to invest in Malawi. The country is a party to a number of multilateral, regional and bilateral trade agreements, offering wider access and preferential treatment for Malawian products. These agreements are already being utilized. The multilateral and regional trade agreements include:

** COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA (COMESA): COMESA has a potential market of 340 million people and a combined GDP of US\$170 billion. Member states within the COMESA have continued to take steps to consolidate the Free Trade Area in preparation for the forthcoming transition of the COMESA Free Trade Area into a Customs Union due to come into force in December 2008. COMESA has signed a Trade and Investment Framework Agreement (TIFA) with the United States.

** SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC): The SADC region has a potential market of 199 million people and a combined GP of US\$176 billion. Under SADC, Malawi is committed to reducing tariffs on intra-SADC trade progressively. Tariff reductions for all member states (except for DRC and Angola) started in January 2000. SADC was to have achieved Free Trade Area status on January 1, 2008, but as of January 2010 few countries had completed their tariff phase downs, and some - including Malawi - had not yet started.

** AFRICAN GROWTH AND OPPORTUNITY ACT (AGOA): AGOA offers duty and quota-free access to the United States market of 298 million people for 1,800 products, in addition to the standard GSP program.

** EVERYTHING BUT ARMS (EBA): This initiative extends duty-and quota-free access to the European Union market for all imports from Least Developed Countries, except arms. Minor variations apply to bananas, sugar and rice. Full liberalization took place for these commodities 2009.

¶44. Bilateral trade agreements exist with South Africa, Zimbabwe, and Mozambique, and a customs agreement is in place with Botswana. In addition, trade agreements are currently under consideration with Zambia and Tanzania. These offer considerable opportunities for increased trade and investment.

¶45. Malawi acceded to the Multilateral Investment Guarantee Agency (MIGA) in 1985/86. Since MIGA provides mechanisms for the settlement of investment disputes, Malawi has not renewed several investment treaties that lapsed after 1986. Malawi also signed investment promotion and protection agreements (IPPAs) with the OPEC Fund for International Development, Libya, Italy, Netherlands and Zimbabwe.

OPIC AND OTHER INSURANCE PROGRAMS

¶46. Malawi has had an OPIC investment guarantee agreement since 1967. In August 1999 the U.S. Export-Import Bank included Malawi under its new Africa Short-term Export Credit Insurance Program.

LABOR

¶47. The Government of Malawi estimates that more than half of the population is of working age. Unskilled labor is plentiful. Skilled and semi-skilled labor is scarce. Occupational categories with skills shortages include accountants and related personnel; economists, engineers, primary and secondary school teachers, lawyers, and medical and health personnel. The University of Malawi provides bachelors and masters degrees in economics, engineering, medicine, education, agriculture and administration. The Malawi College of Accountancy teaches accounting. Chancellor College operates the country's law school. In early 1999, the government established the Technical, Entrepreneurial and Vocational Education and Training (TEVET) program to address technical skills shortages in industry.

¶48. The Labor Relations Act (LRA), enacted in 1997, governs labor-relations management in Malawi. The Act allows strikes and lockouts for registered workers and employers after dispute settlement procedures in collective agreements and conciliation have failed. As democracy and trade union rights have existed only since 1994, industrial relations are still evolving. Employers, labor unions, and government lack sufficient knowledge of their legitimate roles in labor relations/disputes.

¶49. Workers have the legal right to form and join trade unions. Twenty-nine unions are registered. Union membership is low, however, given the small percentage of the work force in the formal sector (about 12 percent), the lack of awareness of worker rights

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and benefits, and a resistance on the part of many employees to join unions. Only 13 percent of people employed in the formal sector belong to unions. Unions may form or join federations, and have the right to affiliate with and participate in the affairs of international workers' organizations. While the government is a signatory to the ILO Convention protecting worker rights, mechanisms for enforcing the provisions of the convention are weak. There are serious manpower shortages at the Ministry of Labor, resulting in almost no labor-standards inspections.

FOREIGN TRADE ZONES/FREE PORTS

¶50. Legislation for the establishment of export processing zones (EPZs) came into force in 1995. All companies engaged exclusively in manufacture for export may apply for EPZ status. As of December 2009, 24 firms were licensed and 19 were operating under the EPZ scheme. Almost all these companies are foreign owned companies though the law does not discriminate on ownership. A manufacturing under bond (MUB) scheme offers slightly less attractive incentives to companies that export some, but not all, of their products. Thus most prefer to operate under EPZ arrangement.

FOREIGN DIRECT INVESTMENT STATISTICS

¶51. Both the Reserve Bank of Malawi (RBM) and the Malawi Investment Promotion Agency (MIPA) maintain records on the value and composition of foreign direct investment in Malawi. Neither the RBM nor MIPA, however, currently capture actual FDI figures, so data since 2004 only includes investment pledges. Registered investment pledges flowing into Malawi increased from an average annual rate of US\$ 50 million to US\$ 143.5 million in 2008. That was the highest level of investment that had been attained by Malawi since 1993, with the exception of 2006 when Australian mining company Paladin Uranium Mining alone invested US\$ 130 million. From this high,

investment pledges declined 23.6 percent to US\$ 109.5 million in 2009.